

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 646 (Sub-No. 1)

SIMPLIFIED STANDARDS FOR RAIL RATE CASES

Decided: September 25, 2006

In a decision served on July 28, 2006, the Board issued a Notice of Proposed Rulemaking (NPRM) seeking public comments on a proposal to revise and clarify its standards and procedures for resolving “those cases in which a full stand-alone cost presentation is too costly, given the value of the case.” 49 U.S.C. 10701(d)(3). As discussed in the NPRM, the Board proposed to create a simplified stand-alone cost procedure to use in medium-size rate disputes, retain the Three-Benchmark method, with certain modifications and refinements, for small rate disputes, and establish eligibility presumptions based on the maximum value of the case to distinguish between large, medium-size, and small rail rate disputes.

On September 13, 2006, The National Industrial Transportation League (NITL) filed a request for Board workpapers underlying the NPRM.<sup>1</sup> In particular, NITL seeks the workpapers underlying three sets of computations offered for illustrative purposes. They include (1) Table 1, which showed the anticipated impact of the proposed changes on the relationship between the RSAM and  $R/VC_{total}$  benchmarks; (2) Table 2, which estimated the percentage of regulated rail movements that would be presumed eligible to use these new simplified guidelines; and (3) all tables in Appendix A, which showed the Board’s findings in six prior stand-alone cost cases for a variety of road-property investment expense categories.<sup>2</sup>

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<sup>1</sup> On September 15, 2006, Arkansas Electric Cooperative Corporation filed a request that it also be provided copies of all workpapers and documents furnished to NITL if the Board were to grant NITL’s request. The Association of American Railroads and Snavelly King Majoros O’Connor & Lee, Inc., respectively, made similar requests on September 19, 2006, and September 21, 2006. Comments in response to NITL’s request were filed by BNSF Railway Company on September 20, 2006, by Norfolk Southern Railway Company and CSX Transportation, Inc., jointly, on September 21, 2006, by Canadian Pacific Railway Company and its U.S. subsidiaries also on September 21, 2006, and by Union Pacific Railroad Company on September 22, 2006.

<sup>2</sup> To the extent the request seeks the output statistics supporting the regression equations in Table A-7, that information was not provided to the Board in the underlying cases.

Release of the workpapers supporting Table 2 or the various tables in Appendix A would entail the unnecessary release of confidential, commercially sensitive information. The calculations in Appendix A were drawn from the Board's findings in six prior rate cases. And the calculations in Table 2 were drawn from the unmasked confidential Waybill Sample. The methodology underlying the results in Table 2 is set forth in the Appendix to this decision. It is not, however, the practice of the Board to release commercially sensitive information. Should a transportation practitioner, consulting firm, or law firm wish to analyze the impact of the eligibility proposal, it may obtain the confidential Waybill Sample (with masked contract information) pursuant to 49 CFR 1244.9(b)(4). Using the masked confidential Waybill Sample would have no material effect on the aggregated analysis. Furthermore, if commenters believe that the confidentiality of the information underlying the prior Board findings set forth in Appendix A poses a problem for future litigants seeking to use a simplified procedure, they should present those concerns in their comments on the proposal.

Accordingly, NITL's request will be denied because the material sought is not needed to assess or fully comment on the merits of the methodological changes the Board has proposed. Moreover, the proposal could change in light of the public comments received. Therefore, even if there were a demonstrated need to test the accuracy of any of the calculations in the NPRM, it would be premature at this time.

Finally, NITL seeks workpapers on the time and cost of performing a simplified stand-alone cost or Three-Benchmark analysis. The sources of those estimates were set forth in the NPRM itself. See NPRM at 35-36.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for workpapers is denied.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

## APPENDIX

### Methodology for Table 2

1. Identify same shipment moves in the Waybill sample based on same movement characteristics:
  - a. Same 7 digit STCC
  - b. Same origin and destination FSAC
  - c. Same railroad
  - d. Same routing
2. Aggregate URCS costs and unmasked revenues for each same movement
3. Calculate which movement is above or below 180% (R/VC)
4. For each movement with R/VC greater than 180, determine maximum value of
 
$$\sum_{n=0}^4 \frac{(R - 1.8 * VC)}{(1 + i)^n}$$
 the case over a five year period: where
  - a.  $R$  is unmasked revenue attributed to the movement
  - b.  $VC$  is URCS variable cost
  - c.  $i$  is industry cost of capital
5. Delete exempt traffic (Specifically, 49 CFR 1039.10 Exemption of agricultural commodities except grain, soy-beans, and sunflower seeds; 49 CFR 1039.11 Miscellaneous commodities exemptions; 49 CFR 1039.13 Rail intermodal transportation exemption; and 49 CFR 1039.14 Boxcar transportation exemptions and rules.) This means:
  - a. Delete any waybill traffic with exempt flag
  - b. Delete exempt car types, i.e., box, TOFC/COFC
6. Stratify movements by maximum value of the case: <\$200 K, <\$3.5 m, >\$3.5 m
7. Aggregate revenues by 2 digit STCCs